

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

OCEAN SPRAY CRANBERRIES, INC., Plaintiff, v. DECAS CRANBERRY PRODUCTS, INC., ET AL., Defendants.	Action pending in the United States District Court for the District of Massachusetts Civil Action No. 1:10-cv-11288-RWZ
---	---

**OCEAN SPRAY CRANBERRY, INC.'S
MOTION TO COMPEL JEFF BENTZ'S COMPLIANCE WITH RULE 45
SUBPOENA AND FOR AN ORDER OF CONTEMPT**

Plaintiff Ocean Spray Cranberries, Inc. ("Ocean Spray") respectfully submits this motion to compel Jeff Bentz to comply with a subpoena that Ocean Spray properly issued and served pursuant to Fed. R. Civ. P. 45. Declaration of Jennifer Giordano Exs. A, B (Dec. 20, 2010) ("Giordano Decl."). Mr. Bentz does not dispute that he has relevant information that is responsive to the subpoena. Accordingly, Ocean Spray seeks an order compelling Mr. Bentz to appear for a deposition and to produce documents in response to the subpoena. Since Mr. Bentz has not articulated a valid basis for his refusal to comply with the subpoena, Ocean Spray also seeks an order of contempt, and its costs and fees associated with the preparation of this motion. As set forth more fully in the accompanying memorandum of law, the grounds for this motion are as follows:

1. Mr. Bentz has information relevant to a lawsuit that Ocean Spray filed on August 2, 2010 in the United States District Court for the District of Massachusetts against Decas

Cranberry Products, Inc. and its related entities for violations of, inter alia, the Agricultural Fair Practices Act, 7 U.S.C. §§ 2301 et seq. (the “Massachusetts action”). Giordano Decl. Ex. C.

2. On December 2, 2010, Ocean Spray served a Rule 45 subpoena on Mr. Bentz. Giordano Decl. Exs. A, B. The subpoena commanded Mr. Bentz to appear for a deposition and to produce documents on December 16, 2010, at Northwestern Court Reporters, 800 Wisconsin Street, Banbury Place, Building 2, Suite 420, Eau Claire, WI 54703, which is within 100 miles of where Mr. Bentz resides in Nekoosa. *Id.* The subpoena provided Mr. Bentz with two weeks advance notice. The subpoena seeks information and documents that are relevant to Ocean Spray’s claims in the Massachusetts action.

3. Mr. Bentz did not appear for his deposition on December 16 and has not produced any documents in response to the subpoena.

4. Mr. Bentz has confirmed in a letter to counsel for Ocean Spray that he will not comply with the subpoena, but he has offered no valid basis for this refusal. Giordano Decl. Ex. F.

WHEREFORE, Ocean Spray respectfully requests that the Court grant this motion to compel and enter an order (1) requiring Mr. Bentz to appear for a deposition and to produce responsive documents within 14 days from the date of the order, (2) holding Mr. Bentz in contempt for refusing to obey the subpoena without adequate excuse, and (3) awarding Ocean Spray its fees and costs associated with bringing this motion as a remedy for that contempt.

Dated: December 20, 2010

/s/Matthew J. Duchemin

Matthew J. Duchemin

Matthew J. Splitek

QUARLES & BRADY LLP

33 East Main Street, Suite 900

Madison, Wisconsin 53703

Telephone: (608) 283-2478

Facsimile: (608) 294-4916

Email: Matthew.Duchemin@quarles.com

Email: Matthew.Splitek@quarles.com

Attorneys for Ocean Spray Cranberries, Inc.

*Attorneys for Ocean Spray Cranberries, Inc.
in the Massachusetts action:*

Margaret M. Zwisler

Jennifer L. Giordano

LATHAM & WATKINS LLP

555 Eleventh Street, NW, Suite 1000

Washington, DC 20004

Telephone: (202) 637-1092

Facsimile: (202) 637-2201

Email: margaret.zwisler@lw.com

Alfred C. Pfeiffer, Jr.

LATHAM & WATKINS LLP

505 Montgomery Street, Suite 2000

San Francisco, CA 94111-6538

Telephone: (415) 391-0600

Facsimile: (415) 395-8095

Email: al.pfeiffer@lw.com

DC/1398417

CERTIFICATE OF GOOD FAITH ATTEMPT TO RESOLVE DISPUTE

I hereby certify that counsel for Ocean Spray Cranberries, Inc. conferred with Mr. Bentz in good faith in an effort to resolve this dispute without Court action, but was unsuccessful.

/s/Matthew J. Duchemin
Matthew J. Duchemin

Dated: December 20, 2010

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2010, I electronically filed Ocean Spray Cranberries, Inc.'s Motion to Compel Jeff Bentz's Compliance with Rule 45 Subpoena and for an Order of Contempt, and memorandum of law and Declaration of Jennifer L. Giordano in support thereof, with the Clerk of Court using the CM/ECF System.

I hereby further certify that on December 20, 2010, I caused copies of the foregoing documents to be served on Mr. Bentz by Federal Express, overnight delivery, at the following address:

Jeff Bentz

1873 County Road GG

Nekoosa, WI 54457

I further certify that on and after December 20, 2010, attempts will be made to serve Mr. Bentz by hand at the above address.

/s/Matthew J. Duchemin
Matthew J. Duchemin